UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DOCTOR'S ASSOCIATES, INC.,	:	
Plaintiff,	:	
	:	Civ. No. 3:03cv1098 (PCD)
v.	:	
	:	
FRANKLIN D. SMITH and	:	
STACEY V. SMITH	:	
Defendants.	:	

RULING ON PLAINTIFF'S MOTION TO COMPEL ARBITRATION AND MOTION FOR INJUNCTION

Plaintiff Doctor's Associates, Inc. ("DAI") moves to compel arbitration pursuant to the parties' Franchise Agreement (the "Agreement") and for an injunction to enjoin Defendants Franklin D. Smith and Stacey V. Smith (the "Smiths") from prosecuting claims against DAI and certain other individuals and entities in their pending action in the United States District Court for the Northern District of Illinois. For the reasons discussed herein, Plaintiff's motions are **granted**.

I. JURISDICTION

This court has subject matter jurisdiction over Plaintiff's motions pursuant to 28 U.S.C. § 1332.[1]

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[1] It should be noted that while Plaintiff's action to compel arbitration has been brought pursuant to the Federal Arbitration Act ("FAA"), Plaintiff correctly does not rely on this statute as a basis for jurisdiction. It is well established that federal courts do not have jurisdiction under the FAA, unless there exists, apart from the FAA, an independent basis for federal jurisdiction over the underlying dispute. *See Greenberg v. Bear, Sterns & Co.*, 220 F.3d 22, 25 (2d Cir. 2000). Because Plaintiff has sufficiently established that it is a Florida corporation with its principal place of business in Florida, while Defendants are Illinois residents, this Court has original jurisdiction over this action based upon diversity pursuant to 28 U.S.C. § 1332. Furthermore, this Court is the proper venue for Plaintiff's motion because under the FAA, a party seeking to enforce an arbitration agreement is required to file a petition in a United States district court, and all "hearings

II. BACKGROUND

Plaintiff is a Florida Corporation and national franchiser of Subway sandwich shops. In February 2000, Defendants executed the Agreement with Plaintiff in order to operate a Subway sandwich shop. In April 2001, Defendants opened their store for business.

Defendants allege that during their tenure as franchisees, Plaintiff has intentionally discriminated against them in the operation of their franchise because they are African-American.[2] Consequently, in April 2003 Defendants sued Plaintiff in United States District Court for the Northern District of Illinois, alleging violations of 42 U.S.C. §§ 1981 and 1982. Plaintiff filed the present motions to both compel the Defendants to arbitrate their claims pursuant to the Agreement and to enjoin them from pursuing their claims in the Illinois Court.

III. DISCUSSION

Plaintiff moves to compel arbitration pursuant to Section 4 of the Federal Arbitration Act ("FAA") and seeks to enjoin Defendants from proceeding with the claims in their Illinois federal lawsuit pending arbitration.

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and proceedings, under [an arbitration] agreement shall be within the district which the petition for an order directing such arbitration is filed." 9 U.S.C. § 4. At least one court interpreting this language has determined that an action to compel arbitration under the FAA may only be brought in the district where the arbitration agreement provides that the arbitration will take place. *See Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 983 (2d Cir. 1996) (finding Connecticut to be proper venue for motion to compel arbitration because the arbitration clause required arbitration to take place in Connecticut). Because the franchise agreement at issue in the present case mandates that arbitration take place in Bridgeport, Connecticut, this Court is the proper venue for Plaintiff to bring these motions.

[2] Specifically, Defendants contend that Plaintiff, among other things, (1) precluded them from expanding their business and from purchasing another Subway franchise; (2) subjected them to unfair monthly site inspections and compliance reporting requirements, (3) failed to fairly determine the location in which Defendants would be permitted to operate their franchise, and (4) retaliated against them for voicing their about Plaintiff's alleged discriminatory practices. *See* Mem. of Law in Opp'n to Pl.'s Pet. to Compel Arbitration and Mot. for Inj. at 2.

A. Petition to Compel Arbitration

Plaintiff contends that the arbitration clause in the Agreement is both valid and enforceable pursuant to the FAA and therefore, that Defendants are obligated to arbitrate their civil rights claims. In opposition, Defendants argue that the arbitration clause cannot be enforced because the clause wrongfully precludes their access to remedies for their civil rights claims under 42 U.S.C. §§ 1981 and 1982.

In enacting the FAA, Congress intended to establish a strong policy favoring arbitration as an alternative means of dispute resolution. *See* 9 U.S.C. § 2 (making arbitration agreements presumptively "valid, irrevocable and enforceable…"); *see also Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 270, 115 S. Ct. 834, 837, 130 L. Ed. 2d 753 (1995) (finding the basic purpose of the FAA to be to overcome courts' refusals to enforce arbitration agreements); *Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.*, 58 F.3d 16, 19 (2d Cir. 1995) (concluding that federal policy favors arbitration as a form of alternative dispute resolution). An order compelling arbitration brought pursuant to 9 U.S.C. § 4 requires determination of (1) whether a valid agreement to arbitrate exists in the contract in question and (2) whether the dispute for which arbitration is sought falls within the scope of the arbitration clause. *See Nat'l Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 129, 135 (2d Cir. 1996).

The FAA encourages courts to construe arbitration clauses broadly and to resolve any doubts concerning the scope of the arbitrable issues in favor of arbitration. *See Oldroyd v. Elmira Sav. Bank*, 134 F.3d 72, 76 (2d Cir. 1998). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the

construction of the contract language itself of an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). "Arbitration should be ordered unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *S.A. Mineracao da Trindade-Samitri v. Utah Int'l, Inc.*, 745 F.2d 190, 194 (2d Cir. 1984) (internal quotation marks omitted).

In light of the liberal federal policy in favor of arbitration and the broad language of the arbitration clause in the Agreement, Defendants are compelled to arbitrate their civil rights claims against Plaintiff. [3] The arbitration clause in the Agreement is a typical broad arbitration clause, encompassing "any dispute or claim arising out of or relating to this Agreement…." *See* Agreement, § 10(c). The Second Circuit, in examining similar arbitration clauses, has concluded that such language weighs heavily in favor of the presumption of arbitrability. *See Oldroyd*, 134 F.3d at 76; *Collins & Aikman Prods.*, 58 F.3d at 20. Furthermore, each of Defendants' claims "arise out of" or "relate to" their franchise agreement with Plaintiffs.[4] Accordingly, because a

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[3] Because a court compelling arbitration is limited to deciding those issues that are essential "to defining the nature of the forum in which a dispute will be decided", for the purposes of this ruling, it is unnecessary to discuss whether Congress intended to preclude agreements to arbitrate when it passed various provisions of the Civil Rights Act, including 42 U.S.C. § 1981. *See Thompson v. Irwin Home Equity Corp*., 300 F.3d 88, 91 (1st Cir. 2002). It should be noted, however, that is well established that the federal policy in favor of arbitration extends to claims under federal statutes, and that Congress did not intend to contravene this policy in passing various provisions of the Civil Rights Act. *See*, *e.g.*, *Gilmer v. Interstate/Johnson Lane Corp*., 500 U.S. 20, 26 (1991) (applying presumption of arbitrability to claims of discrimination under the Age Discrimination in Employment Act*); Koveleskie v. SBC Capital Mkts., Inc.*, 167 F.3d 361, 364-65 (7th Cir. 1999) (concluding that Congress did not intend for Title VII of the Civil Rights Act to prohibit the enforcement of arbitration agreement); *Maye v. Smith Barney, Inc*., 897 F. Supp. 100, 109-10 (S.D.N.Y 1995) (compelling arbitration of claims brought pursuant to Title VII and the Civil Rights Act of 1991).

[4] For example, Defendants' discrimination claims in regards to site selection, leasing policies, and monthly store inspections, all relate to the franchise relationship and are all governed by the Agreement. Consequently, Defendants' claims undoubtedly fall within the scope of the broad arbitration provision in the Agreement.

valid arbitration agreement exists and because the parties' dispute falls within the purview of the broadly worded Agreement, this Court must grant Plaintiff's motion to compel arbitration.

At this stage of the proceeding, the arbitrator, rather than the district court, must determine the applicability and enforceability of a contract's limitation on remedies and the proper division of costs and attorneys' fees for the arbitration. A contrary rule would defeat Congress' obvious intent to promote arbitration as an alternative dispute resolution process in an effort to limit the burden on the already overburdened courts by deeming arbitration agreements presumptively "valid, irrevocable and enforceable..." 9 U.S.C. § 2.

Furthermore, even if this Court did consider the contract's limitation on remedies, the plain language of the contract clearly does not infringe on Defendants' federal statutory rights. Paragraph 17(a) of the Agreement expressly reconciles any inconsistency between the contract and federal law by providing that federal and state law controls to the extent that the contract's remedy provisions impermissibly limit damages in contravention of prevailing federal and state law provisions. *See* Agreement, § 17(a). Thus, because the Agreement provides that federal and state law takes precedence over the remedy limitations found in the contract to the extent that the contract provisions improperly limit damages, it is apparent that the Agreement does not contravene public policy. Moreover, if the arbitrator ultimately determines Defendants should prevail on the merits of their claims, he will not be precluded from granting any and all remedies permissible under the Agreement as well as under federal law. Consequently, Plaintiff's motion

to compel arbitration is hereby **granted**.[5]

B. Motion to Enjoin

In connection with and in addition to suing Plaintiff, Defendants have also sued Subway Development Corporation of Chicagoland, Inc. ("Subway Development") and Subway Real Estate Corp. ("Subway Real Estate") in Illinois federal court. Plaintiff argues that in addition to compelling arbitration, this Court should enjoin Defendants from moving forward with the Illinois lawsuit, pending a decision by the arbitrator. Defendants respond that because their civil rights claims are not subject to the arbitration clause in the Agreement, they are therefore free to pursue them in an Illinois federal court, and thus, the injunction should not issue.

It is well established that courts have the authority to issue injunctions staying parallel state or federal court litigation where an underlying and identical claim is awaiting arbitration. *See* 28 U.S.C. § 2283. Additionally, the Second Circuit as well as this Court has repeatedly issued injunctions staying federal court litigation under similar circumstances where the underlying dispute was subject to the terms of an arbitration clause. *See*, *e.g.*, *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126 (2d Cir. 1997) (upholding the district court's issuance of an injunction and noting that the franchisees would not suffer damage or loss from being forced to arbitrate instead of prosecuting state-court claims); *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975 (2d Cir. 1996) (affirming district court's decision to enjoin defendants and concluding that

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[5] It should be noted that in addition to the arguments addressed here, Plaintiff also makes an alternative argument contending that even if the remedy limitation provisions were determined to be enforceable, that they could be severed from the arbitration clause so as to modify the Agreement to make it comport with the law. Because this ruling is limited to determining whether a valid arbitration agreement exists and whether the parties dispute falls within the scope of that agreement, it is not necessary to determine whether the severability doctrine is applicable to the remedy provisions of the Agreement.

defendant's federal court action was an improper attempt to evade its duty to arbitrate); *Doctor's Assocs., Inc. v. Hollingsworth*, 949 F.Supp. 77 (D. Conn. 1996) (enjoining lawsuit in its entirety because the issues sought to be litigated by franchisees fell within the scope of the arbitration clause and were therefore subject to arbitration).

In the present case, Defendants' allegations against Plaintiff, Subway Real Estate, and Subway Development are essentially identical. Each claim is based on the same facts and same theories of recovery as each pertains to the aforementioned parties alleged discriminatory practices regarding site selection, leasing practices, and monthly store inspections. Therefore, the issues in the Illinois federal litigation are identical to those claims that this Court has found arbitrable in accordance with the Agreement. Accordingly, Plaintiff's motion to enjoin is granted and Defendants are precluded from pursuing their claims in the Illinois federal court pending the decision of the arbitrator.

IV. CONCLUSION

Plaintiff's motions to compel arbitration and for an injunction [Doc. No. 5] are hereby **granted**. The clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, October ___, 2003.

Peter C. Dorsey
Senior United States District Judge